

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MARRIOTT INTERNATIONAL, INC.,

Plaintiff,

v.

DYNASTY MARKETING GROUP, LLC, *et al.*,

Defendants.

Civil Action No. 1:21-cv-00610-AJT/JFA

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE A
SUR-REPLY IN OPPOSITION TO MOTION TO DISMISS FILED BY
DEFENDANT WHISL TELECOM, LLC**

Plaintiff Marriott International, Inc. (“Marriott”), by counsel, files this Memorandum in Support of its Motion for Leave to file a Sur-Reply in response to the Reply in support of Motion to Dismiss Filed By Defendant Whisl Telecom, LLC, ECF No. 65 (“Reply”).

1. The proposed Sur-Reply is necessary because Defendant has raised a new argument. *Thorne v. Astrue*, No. 3:11-cv-720, 2012 WL 4801840, at *1 (E.D. Va. Sept. 20, 2012); *U.S. ex rel. Carter v. Halliburton Co.*, No. 1:11-cv-602, 2011 WL 6178878, at *12 (E.D. Va. Dec. 12, 2011) (“A court has the discretion to allow a sur-reply where a party brings forth new material or deploys new arguments in a reply brief.”).

2. Here, Whisl raises the new argument that, as an intermediate provider, it is not subject to the FCC’s mitigation rule applicable to originating carriers. Reply at 1 n.1. Marriott should have an opportunity to address this new argument.

3 Attached hereto, as **Exhibit A**, is a copy of Marriott’s proposed Sur-Reply, which totals only three (3) substantive pages. Moreover, because Marriott is filing this Motion over a

week before the hearing scheduled for August 12, 2022, Whisl will not be prejudiced by the Court's acceptance of the Sur-Reply. *See Lopez v. Council on American-Islamic Relations Action Network, Inc.*, 657 F.Supp.2d 104, 108 (D.D.C. 2009) (permitting sur-reply where opposing party failed to show prejudice); *see also* Local Rule 7(F)(1) (allowing six days to file a reply brief); *Mothershead v. Xede Consulting Grp., Inc.*, No. 1:14CV1205 (AJT/MSN), 2015 WL 12591801, at *1 (E.D. Va. Mar. 30, 2015).

4. Thus, leave to file a Sur-Reply is proper in these circumstances.

For the reasons identified above, Marriott respectfully requests that the Court grant its Motion for Leave to File a Sur-Reply in response to Defendant Whisl Telecom, LLC's Reply in Support of its Motion to Dismiss for Failure to State a Claim and accept for filing the Sur-Reply filed herewith.

Dated: August 3, 2022

MARRIOTT INTERNATIONAL, INC.
By counsel

/s/ Attison L. Barnes, III

Attison L. Barnes, III (VA Bar No. 30458)

David E. Weslow (for *pro hac vice*)

Kevin G. Rupy (for *pro hac vice*)

Duane C. Pozza (for *pro hac vice*)

Stacey J. LaRiviere (VA Bar No. 92354)

WILEY REIN LLP

2050 M St. NW

Washington, DC 20036

Tel: (202) 719-7000

abarnes@wiley.law

dweslow@wiley.law

krupy@wiley.law

dpozza@wiley.law

slariviere@wiley.law

Counsel for Plaintiff
Marriott International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of August, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel of record and mailed first class, postage prepaid, to all remaining parties as follows:

Oficinas Parrott Caribbean S.A. de C.V.
c/o Ministry of Foreign Affairs
Directorate-General of Legal Affairs
Plaza Juarez No. 20, Planta Baja
Col. Centro, Alcaldia Cuauhtemoc
C.P. 06010 Ciudad de Mexico
Mexico

Deep Blue Desarrollos S de R.L. de C.V.
d/b/a Vallarta Gardens Private Beach Club &
Spa Private Residence Club
c/o Ministry of Foreign Affairs
Directorate-General of Legal Affairs
Plaza Juarez No. 20, Planta Baja
Col. Centro, Alcaldia Cuauhtemoc
C.P. 06010 Ciudad de Mexico
Mexico

Club Caribe Villa Del Palmar S.A. de C.V.
c/o Ministry of Foreign Affairs
Directorate-General of Legal Affairs
Plaza Juarez No. 20, Planta Baja
Col. Centro, Alcaldia Cuauhtemoc
C.P. 06010 Ciudad de Mexico
Mexico

Cancun Ink Corp. S.A. de C.V.
c/o Ministry of Foreign Affairs
Directorate-General of Legal Affairs
Plaza Juarez No. 20, Planta Baja
Col. Centro, Alcaldia Cuauhtemoc
C.P. 06010 Ciudad de Mexico
Mexico

Phillip S. Griffin, II
Phillip S. Griffin II, P.C.
102 South Kent Street
Winchester, Virginia 22601
Tel: (540) 667-4647
psgpg@griffinlaw.info

*Counsel for Defendant
Dynasty Marketing Group LLC*

/s/ Attison L. Barnes, III
Attison L. Barnes, III (VA Bar No. 30458)
Wiley Rein LLP
2050 M St. NW
Washington, DC 20036
Tel: (202) 719-7000
abarnes@wiley.law

Counsel for Plaintiff Marriott International, Inc.